

Written Ministerial Statement

Anti-Avoidance

The Exchequer Secretary to the Treasury (David Gauke MP): The Government is fully committed to tackling tax avoidance and will take necessary steps to protect the Exchequer and maintain fairness in the tax system.

At the June Budget the Government set out its commitment to improving predictability and stability in the tax system in *Tax policy making: a new approach*. In that discussion document, the Government announced that it will adopt a more strategic approach to the risk of avoidance. By building in sustainable defences to avoidance we will reduce the need for frequent legislative changes and limit the cases when the changes are introduced with immediate effect.

However, there will still be occasions where the Government needs to introduce immediate changes to legislation in order to address significant avoidance risks. The Government's response to these risks will be balanced with its commitment to improving predictability and stability in the tax system. The Government will shortly publish a draft Protocol that will set out the circumstances in which it will consider changing legislation with immediate effect. This will be published alongside the Government's response to the consultation on improving tax policy making on 9 December.

It is within this context that the Government is announcing today a number of changes to legislation to tackle tax avoidance. Some of these have immediate effect.

Group Mismatches

The Government is introducing legislation taking effect from 6 December to counter tax avoidance schemes that aim to reduce a group's liability to corporation tax through asymmetrical tax treatment of intra-group loans or derivatives (group mismatch schemes).

The legislation amends section 418 of the Corporation Tax Act 2009. Section 418 was introduced to block schemes that involve the provision of intra-group finance through the use of convertible securities. In the schemes the debtor company claims tax deductions for larger amounts than the credits on which the creditor company is chargeable. The amendments ensure that section 418 will apply where

- a company connected with the creditor company is or may become entitled or required to acquire shares in a company, or
- amounts are taken into account under the loan relationship rules in determining the chargeable profits of a controlled foreign company.

Because of repeated avoidance in this area, and following the issue of a discussion document in March, HMRC has today published a Technical Note containing draft legislation to tackle group mismatch schemes using a principles-based or generic approach. This legislation will come into force from the date of Royal Assent to Finance Bill 2011, following further consultation on the detail.

Derecognition

The Government is introducing legislation taking effect from 6 December to counter tax avoidance schemes involving accounting derecognition. This follows consultation on a Technical Paper published by HMRC on 6 July.

The proposed legislation amends sections 311 and 312, and sections 599A and 599B, of the Corporation Tax Act 2009. This legislation addresses avoidance schemes under which, in accordance with generally accepted accounting practice (GAAP), amounts that are taxable under the rules on loan relationships and derivative contracts are not fully recognised in a company's accounts. In such cases, a company's corporation tax computations must be prepared on the assumption that all such amounts were fully recognised. The legislation currently applies only where a number of specific conditions are met, and has been amended on a number of occasions since its introduction in 2006, in response to new avoidance schemes that purport to circumvent the conditions.

As a result of persistent avoidance using derecognition schemes, the Government is announcing that the legislation will now apply as a general rule, without reference to specific conditions, wherever a company is a party to tax avoidance arrangements and, in accordance with GAAP, amounts are not fully recognised in its accounts. In addition, a company will be denied a debit for a loss arising on derecognition of a loan relationship or derivative contract, again where the company is party to tax avoidance arrangements.

Further details are contained in a draft explanatory note published on HMRC's website today, together with the proposed draft legislation.

Disguised Remuneration

As confirmed at the June Budget, the Government will introduce legislation to tackle arrangements involving trusts or other vehicles used to reward employees, which seek to avoid or defer the payment of income tax or National Insurance Contributions (NICs), including to provide a tax-advantaged alternative to saving beyond the annual and lifetime allowances available in a registered pension scheme.

A further announcement will be made shortly.

Functional Currency – Investment Companies

Draft legislation will be published on 9 December 2010, alongside other draft clauses for Finance Bill 2011, to counter avoidance involving changes in the functional currency of an investment company. The legislation will take effect for accounting periods beginning on or after 1 April 2011. This will ensure that when a UK resident investment company changes its functional currency no foreign exchange gains or losses arising from loan relationships or derivative contracts will be brought into account for tax purposes in the first period of account using the new functional currency.

At the same time, investment companies will be able to elect, prospectively, for a different functional currency for tax purposes than the currency used in the accounts.

VAT Supply Splitting

Draft legislation will be published on 9 December 2010, alongside other draft clauses for Finance Bill 2011, to counter avoidance relating to the supply of services where arrangements have been made for the supply of printed matter that is ancillary to those services to be made by a different supplier.

The VAT Act will be amended to withdraw zero rating from printed matter where it is ancillary to a differently rated service, and where, if the service and printed matter had been supplied by a single company, the printed matter would not have been zero rated.

The legislation will come into force from the date of Royal Assent to Finance Bill 2011, following consultation on the detail.

General Anti Avoidance Rule

As announced in the June 22 discussion document *Tax policy making: a new approach*, HMRC engaged informally over the summer with a range of interested parties to consider whether there was a case for a General Anti Avoidance Rule (GAAR) in the UK. Those discussions showed that there was some support for such a Rule, but it was clear that there were also concerns that a Rule would generate uncertainty about the tax treatment of business transactions and about how that uncertainty could be managed in practice.

I am setting in train a study programme to establish whether a GAAR could be framed to meet the objectives of deterring and countering tax avoidance in a fair way, while providing certainty, retaining a tax regime that is attractive to business and minimising compliance costs for businesses and HMRC and, if so, how the provisions of the GAAR might be framed.

This study will be led by Graham Aaronson QC, supported by a small group of experts. The membership of the group is being finalised, and details will be announced in January. The Group will complete its study by 31st October 2011, informing Ministers of its conclusions and, if applicable, providing model provisions and explanatory notes. The Government will consider the outcome of this work as part of the Budget decision-making process, taking account of the impact on certainty for taxpayers as to the tax treatment of transactions and the implications for HMRC in terms of costs and other priorities. The Government would not introduce a GAAR without further formal public consultation.

I will place a copy of the Terms of Reference for the group in the Library of the House.

Disclosure of Inheritance Tax Avoidance

HMRC are today publishing a document in response to the consultation on bringing IHT on transfers of property into trust within the disclosure regime (DOTAS). The Government will, as planned, bring such transfers within DOTAS, but will make some changes to its implementation as a result of the consultation. The necessary regulations, taking into account those changes, will come into effect on 6 April 2011.

HM Treasury
6 December 2010